

REMARKS

This Application has been reviewed in light of the Office Action mailed October 12, 2005 ("Office Action"). All pending Claims 1-49 were rejected in the Office Action. In order to advance prosecution Applicants have added new Claims 50 and 51. Applicants respectfully submit that no new matter has been added. For at least the reasons provided below, Applicants respectfully request reconsideration and allowance of all pending and new claims.

Section 112 Rejections

The Office Action rejects Claims 12 and 23 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of which applicant regards as the invention. Specifically, the Office Action states that "the term approximately renders the claim indefinite because one of ordinary skill would not know the range of outputs that is meant to be covered by the claims." *Office Action*, page 2. Applicants respectfully traverse this rejection. Applicants respectfully submit that the term "approximately" in this context would have meaning to one of ordinary skill in the art and further note that both the Board of Patent and Appeals and Interferences and the Federal Circuit have upheld the use of similar terms, such as "about." See e.g. *Ex Parte Eastwood*, 163 U.S.P.Q. 316 (Bd. App. 1968); *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Therefore, for at least this reason Applicants respectfully submit that Claims 12 and 23 are not indefinite and request that the rejection of these claims be withdrawn.

Section 103 Rejections

The Office Action rejects Claims 1-32, 36-44, and 46-49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,331,956 issued to Anderson ("*Anderson*") in view of U.S. Patent No. 6,874,041 issued to Burd et al. ("*Burd*") and in further view of U.S. Patent No. 4,661,123 issued to McDonald ("*McDonald*"). Applicants respectfully traverse these rejections for the reasons discussed below.

Claim 1 recites input ports operable to receive DSL data from a data switch and output ports capable of being coupled to a CPE device. Claims 15, 18, 30, 33, 36, 40, and 44-46 recite similar elements. The Office Action states that *Anderson* does not disclose input ports operable to receive DSL data or output ports capable of coupling to a CPE device. *Office Action*, page 3.

The Office Action further asserts that *Burd* discloses these elements at column 10, line 8 to column 12, line 22. *Office Action*, page 4. Applicants respectfully disagree. *Burd* discloses a “communication device” that transmits “a tone request or other similar request to the DSLAM equipment in a central office. The tone request comprises a signal from the CPE” *Burd*, Column 10, lines 27-33. Thus, the communication device disclosed in *Burd* is a CPE device. There is no disclosure that the communication device of *Burd* includes output ports capable of being coupled to a CPE device. Therefore, for at least these reasons Applicants respectfully submit that Claims 1, 15, 18, 30, 33, 36, 40, and 44-46 are patentable over the cited references and request that the rejection of these claims be withdrawn.

Claims 2-14 depend, either directly or indirectly, from Claim 1; Claims 16 and 17 depend from Claim 15; Claims 19-29 depend, either directly or indirectly, from Claim 18; Claims 31 and 32 depend from Claim 30; Claims 34 and 35 depend from Claim 33; Claims 37-39 depend from Claim 36; Claims 41-43 depend from Claim 40; and Claims 47-49 depend, either directly or indirectly, from Claim 46. Therefore, for at least the reasons discussed above with respect to Claims 1, 15, 18, 30, 33, 36, 40, and 44-46 applicants respectfully submit that Claims 2-14, 19-29, 31-32, 34-35, 37-39, 41-43 and 47-49 are patentable over the cited references and request that the rejection of these claims be withdrawn.

In addition, Claim 6 recites a catcher port coupled to each output port and operable to monitor each output port to detect an active connection of a CPE device to one of the output ports and to form an active connection with one of the output ports to alleviate a bad cluster. Claims 8, 26, 28, 32, 35 and 48 recite similar elements. The Office Action states that *Anderson* does not disclose “a catcher port to monitor each output port to detect an active connection and to form an active connection to alleviate a bad cluster.” *Office Action*, page 3. The Office Action further asserts that *Burd* discloses these elements at column 10, line 8 to column 12, line 22. *Office Action*, page 4. Applicants respectfully disagree. *Burd* discloses monitoring for an acknowledgement tone (Fig. 11, column 10, lines 34-36) and for a dial tone (Fig. 12, column 11, lines 47-50). The invention disclosed in *Burd* is of a method and device “for the automatic configuration of a communication input/output port or terminal on a communication device.” *Burd*, Abstract. *Burd* also discloses that if an acknowledgement is not received then switches are actuated to a non-default position. *Burd*, column 10, lines 50-54. *Burd* merely discloses monitoring for an acknowledgement on a first line and if an acknowledgement is not received on

the first line to try a second line. *Id.* If no acknowledgement is received on the second line then *Burd* discloses concluding that there is no communication service present. *Burd*, column 11, lines 4-8. Nowhere does *Burd* disclose, teach or suggest using a catcher port to monitor each output port to detect an active connection of a CPE device to one of the output ports and to form an active connection with one of the output ports to alleviate a bad cluster. Therefore, for at least these additional reasons Applicants respectfully submit that Claims 6, 8, 26, 28, 32, 35 and 48 are patentable over the cited references and request that the rejection of these claims be withdrawn.

Furthermore, Applicants respectfully submit that the *Anderson-Burd* combination is improper with respect to Claims 6, 8, 26, 28, 32, 35 and 48. In establishing a *prima facie* case of obviousness a prior art reference must be considered in its entirety, including portions that would lead away from the claimed invention. M.P.E.P. 2141.02. Applicants respectfully submit that *Anderson* teaches away from the inclusion of a catcher port that is operable to form an active connection to alleviate a bad cluster. *Anderson* teaches that all the output ports are connected to each input port (column 3, lines 11-13). Each output port can thus make a connection with any input port. Therefore, there would be no need for a catcher port to make an active connection with one of the output ports. *Anderson* thus teaches away from the proposed combination. Therefore, for at least this additional reason Applicants respectfully submit that Claims 6, 8, 26, 28, 32, 35 and 48 are patentable over the cited references and request that the rejection of these claims be withdrawn.

In addition, Claim 3 recites each $1 \times N$ solid-state analog switch is operable to couple one of the input ports with N output ports wherein the number of output ports is greater than N . Claims 20, 36, 40 and 44-46 recite similar elements. *Anderson* discloses “[e]ach input port is connected to an appropriate X-Y intersection latch associated with its corresponding row or column.” *Anderson* Column 3, lines 11-13. With respect to *Anderson* the Office Action states that it “would have been obvious for N to be less than the total number of outputs because then the number of subscribers at the output can grow without necessitating the replacement or rewiring of all the previously installed switches.” *Office Action*, page 3. Applicants respectfully disagree. To establish obviousness “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings.” M.P.E.P. §4142. The Office Action has not cited to any portion of any prior art for the contention that it “would have been

obvious for N to be less than the total number of outputs because then the number of subscribers at the output can grow without necessitating the replacement or rewiring of all the previously installed switches.” *Office Action*, page 3. Therefore, Applicants respectfully submit that Claims 3, 20, 36, 40 and 44-46 are allowable over the cited art and request that the rejection of these claims be withdrawn.

Claims 33-35 and 45

Applicants note that the Office Action fails to reject Claims 33-35 and 45. Applicants respectfully submit that Claims 33-35 and 45 are allowable over the cited art used in the other rejections and request allowance of these claims.

New Claims

Applicants add new Claims 50 and 51. Claims 50 and 51 contain no new matter and are fully supported by the specification as filed.

Claim 50 depends from Claim 1, and Claim 51 depends from Claim 18. Therefore, for at least the reasons discussed above with respect to Claims 1 and 18 applicants respectfully submit that Claims 50 and 51 are patentable over the cited references and request that the new claims be allowed.

Furthermore, Claim 50 recites a sweeper port coupled to each output port, wherein the sweeper port is operable to continuously cycle through each output port, establishing an active connection for a period of time to detect an active connection of a CPE device to one of the output ports. Claim 51 recites similar elements. In rejecting Claim 4 the Office Action cited *Burd* as showing “a sweeper port to monitor each output port to detect an active connection.” *Office Action*, page 3. Nowhere does *Burd* disclose, teach or suggest a sweeper port operable to continuously cycle through each output port, establishing an active connection for a period of time to detect an active connection of a CPE device to one of the output ports. Thus, for this additional reason Applicants respectfully request allowance of Claims 50 and 51.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad C. Walters, Attorney for Applicants, at the Examiner's convenience at (214) 953-6511.

A check in the amount of \$100.00 is enclosed as fees for additional claims. Although Applicants believe no additional fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants



Chad C. Walters
Reg. No. 48,022

Date: January 12, 2006

Correspondence Address:

Customer Number:

05073